IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7915 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KANTIBHAI BUDHAJI THAKOR

Versus

STATE OF GUJARAT

Appearance:
Ms.Jotsana Patel for
MS SUBHADRA G PATEL for Petitioner
Mr.H.L.Jani, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 18/02/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the order of detention passed by the Police Commissioner, Ahmedabad City on 19.7.99 whereby the petitioner has been detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985.

The petitioner is under detention in Bhavnagar District Prison, Bhavnagar since 20.7.99. The learned A.G.P. has pointed out that the detention order was confirmed by the Board on 29.8.99. The grounds of detention enclosed with the detention order show that the petitioner is engaged in the business of unauthorised liquor. 5 Criminal cases under the Prohibition Act have been registered against him on different dates i.e. on 6.10.97, 12.2.98, 17.4.98, 10.11.98 and 10.7.99 at Prohibition Squad Police Station, East Division, Ahmedabad City; Prohibition Squad Police Station, East Division, Odhav; Prohibition Squad Police Station, East Division, Odhav; Prohibition Squad Police Station, East Division, Ahmedabad City and Prohibition Squad Police Station, East Division, Ahmedabad City respectively. Out of these 5 cases, in first 3 cases, 8, 31 and 5 lits. of country liquor was recovered and these cases are pending in the Court. In rest of the 2 cases 150 and 10 lits. of country liquor was recovered and investigation was pending as on the date of the order of detention.The detaining authority has recorded that the petitioner is a bootlegger and is engaged in anti social activities. Reference has also been made to the incidents dt.20.6.99 and 5.7.99 as deposed by two witnesses. It has been mentioned that the petitioner is a bootlegger and is engaged in the anti social activities of selling unauthorised liquor and that he has been beating persons with use of deadly weapons who come in his way to conduct the said business. He has been openly threatening such persons who obstruct him and has been spreading atmosphere of fear and the innocent citizens are not in a position to come against him openly out of fear. It has also been mentioned that at the time of detention order, he was in judicial custody and unless he is detained, his anti social activities cannot be deterred.

Learned counsel for the petitioner has argued that even if all these allegations, as set out in the grounds of detention, are found to be correct, no case of breach of public order is made out. Learned A.G.P. has also failed to show how the ingredients of breach of public order was made out on the basis of the grounds set out in support of the order of detention.

In view of several decisions of the Supreme Court,it cannot be said that in the facts of the present case, the ingredients of threat to public order exist. In absence of a case of breach of public order, the detention order cannot be sustained. It can at the most be said to be a case of breach of law and order.

Accordingly the detention order dt.19.7.99 passed by the Police Commissioner, Ahmedabad City therefore, cannot be sustained in the eye of law.The same is hereby quashed and set aside. It is directed that the petitioner shall be released forthwith if not required to be detained otherwise under any other detention order or in any other criminal case. This Special Civil Application is allowed. Rule is made absolute.

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